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Federal Communications Commission

DA 96-1232

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Investigation of Bell Atlantic's)	
New Expanded Interconnection Offerings)	CC Docket No. 96-165
)	
Bell Atlantic Telephone Companies)	Transmittal Nos. 883 and 889
Revisions to Tariff F.C.C. No. 1)	

ORDER

Adopted: August 2, 1996

Released: August 2, 1996

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On June 4, 1996, Bell Atlantic filed Transmittal No. 883, which is scheduled to become effective on August 3, 1996. This transmittal proposes to revise Bell Atlantic's Tariff F.C.C. No. 1 to reinstate physical collocation expanded interconnection service and modify prices for its virtual collocation expanded interconnection service.¹ It also proposes, for the first time, to supplement month-to-month service with three and five year term pricing plans for both virtual and physical collocation. The overhead loading factors for the month-to-month plan (DS1 and DS3 rate elements), the three year term plan (DS1 and DS3 rate elements), and the five year term plan's DS3 rate elements proposed in Transmittal No. 883 for virtual collocation, however, exceed those prescribed by the Commission in its *Virtual Collocation Phase I Order*.² On May 31, 1996, in anticipation of filing Transmittal No. 883, Bell Atlantic filed a petition, requesting an interim waiver of the Commission's prescription for overhead loadings for its virtual collocation services. Bell Atlantic filed this interim waiver request, pending the Commission's action on Bell Atlantic's Motion to Vacate Prescription.³

2. In addition, on July 11, 1996, Bell Atlantic filed Transmittal No. 889 to revise Transmittal Nos. 883 and 887. We therefore address in this order Transmittal No. 889, to the

¹ Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 883.

² See Bell Atlantic's Transmittal No. 883, Workpaper 5-10; Local Exchange Carrier's Rates, Terms and Conditions for Expanded Interconnection, Report and Order, 10 FCC Rcd 6375, Appendix C (*Virtual Collocation Phase I Order*) (1995).

³ See Bell Atlantic Motion to Vacate Prescription, filed September 18, 1995, (requesting that the Commission vacate the existing prescribed overhead loadings for virtual collocation services).

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extent that it revises Transmittal No. 883.

3. On June 18, 1996, MCI Communications Corporation (MCI), MFS Communications Company, Inc., (MFS) and Teleport Communications Group, Inc. (Teleport) filed oppositions to the petition for interim waiver. On June 19, 1996, Teleport, MCI, and MFS filed petitions to suspend and investigate Transmittal No. 883.

4. For the reasons set forth below, we grant Bell Atlantic's petition for interim waiver of the Commission's overhead loading prescription, pending Commission action on Bell Atlantic's Motion to Vacate Prescription. In addition, we find that Transmittal No. 883 and Transmittal No. 889, to the extent that it revises Transmittal No. 883, raise significant issues of lawfulness regarding the rate levels, rate structures and terms and conditions of Bell Atlantic's proposed physical collocation and virtual collocation services. We therefore suspend for one day the effective date of Transmittal No. 883 and Transmittal No. 889, to the extent it revises Transmittal No. 883, and initiate an investigation into the lawfulness of their virtual and physical collocation provisions. These transmittals will also be subject to an accounting order to facilitate any refunds that may later prove necessary.

II. PLEADINGS

A. Bell Atlantic's Petition for Interim Waiver

5. In Transmittal No. 883, Bell Atlantic proposes rates for certain virtual collocation term plans that are calculated by using overhead loading factors that exceed those prescribed by the Commission in its *Virtual Collocation Phase I Order*.⁴ To facilitate implementation of Transmittal No. 883, pending the Commission's decision on its Motion to Vacate, Bell Atlantic filed a petition for interim waiver requesting that the Commission waive, on an interim basis, its prescribed overhead loading factors.⁵ Bell Atlantic argues that the Commission's overhead loading prescription is based on comparable special access rates that existed at the time the *Virtual Collocation Phase I Order* was adopted and that, because the comparable rates have changed, there is no longer a direct correlation between the prescribed overhead loading factors and comparable access services.⁶ Bell Atlantic states that Transmittal No. 883's proposed service offerings will serve the public interest by reintroducing physical collocation, by providing immediate cost savings to current collocators, and by offering pricing alternatives through term plans.⁷

⁴ *Virtual Collocation Phase I Order*, 10 FCC Rcd 6375 (1995).

⁵ Bell Atlantic Petition for Interim Waiver, filed May 31, 1996 (*Bell Atlantic Petition*).

⁶ *Id.* at 2.

⁷ Bell Atlantic Petition at 2-3.

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According to Teleport, Bell Atlantic has inflated its costs by requiring all DS3 cross-connections to be provisioned with electronic digital cross-connect devices and by including unnecessary investments, such as point of termination bays.¹⁸ In a related argument, MFS asserts that use of technologically advanced systems should reduce, not increase, costs.¹⁹ Moreover, MCI asserts that to comply with the Communications Act of 1996, Bell Atlantic's proposed rates for physical collocation should be based on total service long run incremental cost.²⁰ Teleport urges the Commission to require Bell Atlantic to recalculate its rates using more reasonable annual cost factors.²¹

9. Additionally, MCI, MFS, and Teleport oppose several of the terms and conditions of physical collocation proposed by Transmittal No. 883. These carriers cite provisions which they claim are anticompetitive, restrictive, and discriminatory, and thus inconsistent with the pro-competitive mandate of the Telecommunications Act of 1996.²²

10. In its reply, Bell Atlantic contends that its tariff is consistent with all existing Commission requirements and that petitioners raise no issues that warrant suspension and investigation.²³

III. DISCUSSION

A. Bell Atlantic's Petition for Interim Waiver

11. The Commission may exercise its discretion to waive a rule where there is "good cause" to do so,²⁴ and where the particular facts would make strict compliance with the rule inconsistent with the public interest.²⁵ A waiver is, therefore, appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will better serve the public interest than adherence to the general rule.²⁶

¹⁸ Teleport Petition at 4-5.

¹⁹ MFS Petition at 17-18.

²⁰ MCI Petition at 6-7.

²¹ Teleport Petition at 7-8.

²² MCI Petition at 3-5; MFS Petition at 6-16; Teleport Petition at 1-3.

²³ Bell Atlantic Reply to Petitions to Suspend and Investigate at 1-9.

²⁴ 47 C.F.R. § 1.3.

²⁵ *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

²⁶ *Id.* at 1157; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

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6. In their oppositions to Bell Atlantic's petition for interim waiver, MFS and MCI argue that Bell Atlantic has failed to offer cost support that justifies departing from the Commission's prescribed overhead rates.⁸ Teleport states that Bell Atlantic's rates are excessive when compared with similar offerings of other local exchange carriers (LECs).⁹ In addition, MFS contends that Bell Atlantic is attempting to employ selective term discounts, but not volume discounts, which is both unreasonable and anticompetitive.¹⁰ These carriers request that the Commission deny Bell Atlantic's petition to the extent it that it would permit overhead loading factors that exceed those prescribed by the Commission in its *Virtual Collocation Phase I Report and Order*.¹¹

7. In its reply, Bell Atlantic states that because its request for interim waiver is intended solely to bring the overhead loadings to levels consistent with the Commission's policy, the issues raised in the comments of MFS, MCI, and Teleport are "irrelevant and extraneous."¹² Bell Atlantic asserts that it has shown the calculation of comparable overhead loadings in the access tariff and it has fully supported the rates filed in the tariff.¹³ Bell Atlantic states that its new collocation tariff reflects current costs, based upon an updated cost study, that it introduces term pricing plans in response to collocators' request, and that it reduces many of the recurring charges for virtual collocation services and does not increase any such rates.¹⁴

B. Petitions to Suspend and Investigate Transmittal No. 883

8. MCI, MFS, and Teleport argue that Bell Atlantic's overhead loading factors proposed in Transmittal No. 883 exceed those prescribed by the Commission,¹⁵ that Bell Atlantic's proposed rates for collocation are unreasonably high compared to those offered by other LECs,¹⁶ and that Bell Atlantic has not provided cost support data to justify these rates.¹⁷

⁸ MFS Opposition at 1-2; MCI Opposition at 4.

⁹ Teleport Opposition at 2.

¹⁰ MFS Opposition at 2.

¹¹ *Virtual Collocation Phase I Order*, 10 FCC Rcd 6375 (1995).

¹² Bell Atlantic Reply Comment at 3.

¹³ *Id.* at 4.

¹⁴ *Id.* at 4-5.

¹⁵ MCI Petition at 5-7; MFS Petition at 15-17; Teleport Petition at 6-7.

¹⁶ Teleport Petition at 3, 5; MFS Petition at 15-17.

¹⁷ Teleport Petition at 5; MCI Petition at 5-7.

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12. We conclude that special circumstances exist in this case to warrant granting Bell Atlantic's petition for an interim waiver. When the Commission prescribed overhead loadings for virtual collocation services, LECs offered virtual collocation service to interconnectors only on a month-to-month basis. In Transmittal No. 883, Bell Atlantic seeks to offer its expanded interconnection customers term discount plans. We conclude that granting an interim waiver would promote access competition by ensuring that expanded interconnection customers have access to the potential benefits of this tariffed offering while the Commission considers whether Bell Atlantic should be permitted to recover rates that include overhead loading factors for term plans that differ from the overhead loading prescriptions that the Commission made in the *Virtual Collocation Phase I Order*.

13. We emphasize, however, that we are not making a determination as to the reasonableness of Bell Atlantic's proposed overhead loading factors for term pricing plans. We are granting this interim waiver while the Commission considers Bell Atlantic's Motion to Vacate Prescription. Moreover, as discussed below, these price modifications will be subject to an investigation and accounting order.

B. Bell Atlantic's Transmittal Nos. 883 and 889

14. Based on our review of the record, we find that Transmittal Nos. 883 and 889 raise significant issues of lawfulness regarding the rate levels, rate structures and terms and conditions of Bell Atlantic's proposed physical collocation and virtual collocation services. We therefore suspend Transmittal No. 883 and Transmittal No. 889, to the extent it revises Transmittal No. 883, for one day and initiate an investigation into the lawfulness of their provisions. In addition, we will issue a separate order designating the issues to be investigated and establishing a pleading cycle. The rates in Transmittal Nos. 883 and 889 will be subject to an accounting order to facilitate any refunds that may later prove necessary.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 1.3 of the Communications Act, 47 U.S.C. § 1.3, Bell Atlantic's petition for interim waiver of the Commission's overhead loading prescription **IS GRANTED**.

16. **IT IS FURTHER ORDERED** that, pursuant to Sections 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, Bell Atlantic's Transmittal No. 883 and Transmittal No. 889, to the extent it revises Transmittal No. 883, **ARE SUSPENDED** for one day and an investigation of the physical and virtual collocation provisions of these transmittals **IS INSTITUTED**.

17. **IT IS FURTHER ORDERED** that, pursuant to Section 204(a) of the Communications Act, as amended, 47 U.S.C. § 204(a), Bell Atlantic **SHALL KEEP ACCURATE ACCOUNT** of all earnings, costs, and returns associated with the rates that are

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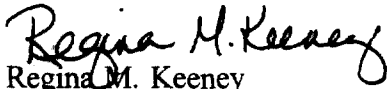
subject to this investigation, and of all amounts paid thereunder and by whom such amounts are paid.

18. **IT IS FURTHER ORDERED** that the petitions to suspend and investigate filed by MCI Communications Corporation, MFS Communications Company, Inc., and Teleport Communications Group, Inc. **ARE GRANTED**.

19. **IT IS FURTHER ORDERED** that Bell Atlantic **SHALL FILE** tariff revisions within five business days of the release date of this Order to reflect this suspension.

20. **IT IS FURTHER ORDERED** that, for these purposes, we waive Sections 61.56, 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59. Bell Atlantic should cite the "DA" number of the instant Order as the authority for this filing.

FEDERAL COMMUNICATIONS COMMISSION


Regina M. Keeney
Chief, Common Carrier Bureau